



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 06-086

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

1. Statutory Authority

The note to s. HFS 172.07 (1) (b) 4. provides that agent health departments are authorized under s. 254.69 (2) (d), Stats., to establish reinspection policies and fees that may differ from s. HFS 172.07 (1) (b) 3. However, s. 254.69 (2) (d), Stats., authorizes agent health departments to establish “separate fees for preinspections of new establishments, for preinspections of existing establishments for which a person intends to be the new operator or for the issuance of duplicate permits,” but does not include establishment of separate fees for reinspections. Can the department clarify its statutory authority for this rule provision?

2. Form, Style and Placement in Administrative Code

a. The department should compare the table of contents for ch. HFS 172 with the actual section titles. For example, the title to s. HFS 172.35 in the table of contents is different than the title in the text.

b. In s. HFS 172.04 (1), the notation “cm” should be replaced with “centimeters.” This problem also occurs in subs. (16) and (38). Similarly, in sub. (8), the notation “m” should be replaced with “meters.” The entire rule should be checked for this. In sub. (17), “currently” should be deleted. The same problem occurs in subs. (27) (b) 1., and (c) 1. to 4. The entire rule should also be checked for this problem. [See s. 1.01 (9) (b) of the Manual.] In sub. (19), “means” should be added after “Erosion feeder.” In sub. (20), the phrase “current channel”

should be defined in the rule. The same problem occurs in sub. (26) with the terms “current channel” and “tubing pool.” In sub. (27) (intro.), “all of” should be inserted after “holding.”

c. In s. HFS 172.04 (4), the separate paragraphs should be numbered pars. (a) and (b). In the second paragraph, “the” should replace “such.”

d. In s. HFS 172.12 (1) (intro.), “all of” should be inserted after “with.” In sub. (2), “is” should be changed to “shall be.” In sub. (4), “is and” should be deleted.

e. In s. HFS 172.16 (3) (a) note, the contact information for the Revisor of Statutes should be included. It appears that sub. (3) (b) 1. should be rewritten so that the introductory material in the first sentence ends with a colon and the second sentence begins with the number 1. In sub. (3) (b) 2. and 3., “should” should be changed to “may.”

f. In s. HFS 172.19 (4) (b) and (c), the lines under the degree symbols should be deleted.

g. In s. HFS 172.20 (1) (a) (title), “Requirement” should be changed to the lower case. The same problem occurs in sub. (1) (b) (title) and sub. (2) (a) (title). [See s.1.05 (2) (d), Manual.]

h. In Table HFS 172.23-B, in the “Public Pools with Diving Boards or Platforms” category, it is unclear whether the staffing requirements provided are required or permissive. Also, in the “Pools with Slides” category, the tab spacing under 3. should be adjusted.

i. In s. HFS 172.27 (1) (intro.), “all of” should be inserted after “contain.” Also, “department” should replace “Department.”

j. In s. HFS 172.28, “shall not” should be changed to “may not.” Also, it appears that “of a public pool or water attraction” should be added before the period.

k. In s. HFS 172.33 (1) (f), “shall not” should be changed to “may not.”

l. In s. HFS 172.34 (1), “is not” should be changed to “may not be.” In sub. (5), “must” should be changed to “shall.”

m. In s. HFS 172.36 (2) (intro.), “all of” should be inserted after “with.” In sub. (2) (c), “are prohibited” should be changed to “may not be allowed.”

n. In s. HFS 172.37 (1) (b), “shall not” should be changed to “may not.”

3. Conflict With or Duplication of Existing Rules

Since ch. HFS 172 is being repealed and recreated, there are a number of incorrect references to provisions of this chapter in ch. Comm 90. The department should alert the Department of Commerce to these changes.

4. Adequacy of References to Related Statutes, Rules and Forms

a. The explanation of agency authority section of the analysis provides that “Section 250 defines licensable pools and water attractions and references ch. Comm 90 of the Wisconsin Administrative Code....” However, assuming that this section is referring to ch. 250 of the statutes, that chapter does not contain such information. Section 254.47 (1), Stats., directs the department to define “public swimming pool” by rule, but does not define “water attractions.” The department should provide the correct citation for its authority.

It also appears that s. 254.69 (2), Stats., regarding agent status for local health departments, should be added to the list of statutes interpreted in the analysis.

b. In s. HFS 172.05 (3) (d), the citation to Table HFS 172.05 should be to Table HFS 172.06.

c. In s. HFS 172.07 (1) (b) 4., the citation “s. HFS 172.05 (1) (c)” should be changed to “s. HFS 172.06 (1) (c).”

d. Section HFS 172.18 (2) references “s. HFS 172.17 (c).” The correct reference should be substituted.

e. In s. HFS 172.26 (2) note, the citation “s. HFS 172.02 (2)” is incorrect. Is s. HFS 172.03 (2) the correct citation?

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. HFS 172.03 (1), “when” should be changed to “if.” Also, the first instance of “will” should be replaced with “is” and “be” should be deleted.

b. Section HFS 172.04 (23) refers to “the pool,” but this is not a defined term. Can the department use a more specific term? The same problem occurs in sub. (30). In sub. (32), a comma should be inserted before “including.” In sub. (33), “municipality” is used, but this term is not defined in the rule. Further, sub. (41) uses “political subdivision”, but does not define that term, either. The department should use one term consistently throughout the rule and define it in s. HFS 172.04. In the second paragraph of sub. (41), can the department clarify the meaning of “used on a regular basis”? In the note after sub. (41), the first sentence is substantive and should be moved to the text of the rule. In sub. (53), “run out” should be hyphenated.

c. In s. HFS 172.04 (27) (a) (intro.), (b) (intro.), and (c) (intro.), should “or more” be inserted after “one”?

d. In the second sentence of the note following s. HFS 172.05 (1) (a) 2., “under” should be capitalized and “section” to be changed to the notation “s.” In sub. (1) (b), “may” should replace “shall.” In sub. (2) (c), the phrase “the public pool or water attraction” should be inserted before “was.” In sub. (2) (d), commas should be inserted around the phrase “as determined by the department or its agent”. In sub. (3) (a) (intro.), “under s. HFS 172.09” should be inserted after “appeal rights.” In sub. (3) (a) 6., “over the public pool or water attraction” should be

inserted before the period. In sub. (3) (d), “under s. HFS 172.06” should be added after “processing charges.”

e. Section HFS 172.06 (1) (b) requires payment of a permit renewal fee” within the first 15 days of the permit renewal period.” However, s. HFS 172.05 (3) (c) requires a permit to be renewed by paying the applicable fee “at least 15 days before the permit expires.” It appears that these two requirements are intended to be identical; therefore, the same terminology to describe the 15-day renewal period should be used consistently throughout the rule. In sub. (1) (d), “facility” should either be defined in the rule or should be replaced with a more specific term. This problem also occurs in s. HFS 172.14 (2) (c) 4, and the entire rule should be reviewed for this problem. Also, can the department clarify what “all regularly assessed fees” include? Similarly, in sub. (2), can the department clarify what “penalty fees” include?

f. In s. HFS 172.07 (3) (b) 2., the phrase “additional 14-day” should be inserted before “time period.”

g. In s. HFS 172.08, the phrase “a request for” should be deleted.

h. In s. HFS 172.10, “in” should be deleted.

i. In s. HFS 172.11 (3) (intro.), it appears that the phrase “rate of turnover” should be changed to “turnover time,” which is a defined term in the rule. In sub. (5), the period after the subsection number should be deleted. In sub. (6) (a), a period should be added at the end.

j. Section HFS 172.14 (2) (a) 4. should specify that the disinfectant should be used according to the manufacturer’s directions. The same problem occurs in sub. (2) (a) 5. In sub. (2) (c) 1., how should operating staff show evidence of training in the use of chlorine gas and maintenance of chlorinating equipment? In sub. (4) (b), the period should not be underscored. In sub. (4) (c), “through” should be changed to “to.” In sub. (4) (e), the rule should indicate where a “department-approved test kit” may be obtained. The same problem occurs in s. HFS 172.17 (1).

k. In Table HFS 172.14, “Whirlpool, Exercise, Therapy Pools” and “Plunge Pools and Wave Pools” should be underlined.

l. In s. HFS 172.22 (1) (d), “A” should be inserted before “Plan” and the comma should be deleted. Subsection (1) (c) requires a sign to be posted “in letters that are a minimum 4 inches high.” But sub. (1) (d) specifies that a sign be posted “in 4 inch letters.” It appears that the same terminology should be used throughout the rule, and the entire rule should be reviewed for this problem. Also in sub. (1) (d), quotation marks should be inserted around “Non-guarded area.” In sub. (2) (a), “life guarding” should be changed to one word. In sub. (2) (b) (intro.), “be” should be deleted. In sub. (2) (b) 2. and 3., periods should be added at the end of each sentence.

m. In s. HFS 172.23 (1) (a) 1., it appears that “when in use” should be changed to “when open to the public.”

n. In Table HFS 172.23-A, “A” in the third column should be lower case. In the second column, “surface area” should be capitalized. Also, it is not clear why “surface area” is used in one column but not the others.

o. In s. HFS 172.24, “requirements” should be changed to “requirement.”

p. In s. HFS 172.26 (1) (c), “adult only” should be hyphenated. In sub. (1) (d), “under Table HFS 172.23-B” should be added before the period.

q. In s. HFS 127.27 (1) (intro.), the rule should explain how a “Department approved first aid kit” can be obtained. Also in sub. (1) (intro.), “Department” should be changed to the lower case. In sub. (2), the rule should indicate how a public pool or water attraction can determine whether biohazard safety equipment may be located at “another location accepted by the department.”

r. In s. HFS 172.29 (2) (intro.), the final period should be changed to a colon. In sub. (6) (intro.), “shall be” should be inserted after “signage” and “and” should be added after “attraction.”

s. In s. HFS 172.30 (6), “non availability” should be hyphenated.

t. In s. HFS 172.31 (1), “Federal” should be changed to the lower case.

u. In s. HFS 172.32 (3) (a) 8., “Copy of” should be deleted and “the” should be capitalized. In sub. (3) (b), should “at least” be inserted before “2 years”?

v. In s. HFS 172.33 (1) (e), “Public” is misspelled.

w. In s. HFS 172.34 (2), it appears that “in use” should be changed to “open to the public”. In sub. (3) “self closing” should be hyphenated. In sub. (5), a comma should be inserted after “lawn” and “4 inch” should be hyphenated. Also, in sub. (5), “shall” should replace “must.”

x. In s. HFS 172.36 (1) (a), the phrase “recognized safe practices” should be clarified. The entire rule should be checked for this problem; for example, this problem also occurs in sub. (1) (c), (d), and (g), and s. HFS 172.37 (1) (a).